IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2367 OF 2005

ALONG WITH

CRIMINAL APPLICATION NO.2368 OF 2005

ALONG WITH

CRIMINAL APPLICATION NO. 2369 OF 2005

ALONG WITH

CRIMINAL APPLICATION NO.2370 OF 2005

M/s Jananamadal Limited & Anr. ... Applicants

V/s

The State of Maharashtra & Anr. ...Respondents

Shri A.M. Saraogi for applicants

Coram : V.M. Kanade, J.

Dated : 26/04/2005.

P.C. :-

1 The applicants are challenging the order of issuance of process by the Metropolitan Magistrate,33rd Court at Ballard Pier, Mumbai by the respondent No.2.

2 It is submitted that the allegations made against the applicant No.2 are vague. In paragraph-2 of the complaint, it is stated that applicant No.2 in his capacity

as Manager and incharge of day to day affairs had been looking after the business of applicant No.1 company. It is submitted that the said averments are not sufficient to aver that the applicant No.2 had been in charge of affairs of the applicant No.1 company as required under the provisions of section 131 of the Negotiable Instruments Act. Therefore, the complaint is liable to be quashed.

3 The second submission made by the learned counsel appearing on behalf of the applicant is that the common notice was issued for the dishonour of 14 cheques by the respondent No.2. It is submitted that since the notice issued by the respondent No.2 is not in consonance with the provisions of section 138 of the Negotiable Instruments Act, the complaint is liable to be dismissed. It is submitted that from the notice only one cause of action had arisen and, therefore, only one complaint had been filed by the complainant. Therefore, the complaint is liable to be dismissed on this ground. It is submitted that the Civil Court at Varanashi had granted ad-interim injunction from making wrongful recovery of any amount against the applicant on the basis of any cheques,until accounts in respect of transaction are settled. It is submitted that in view of the order passed by the Civil Judge (Senior Division),Varanashi, the complainant could not have deposited the cheque in the bank.

4 It is not possible to accept the submission made by

the learned counsel for the applicant. On the perusal of the complaint, it can be seen that there are sufficient averments in the complaint made against the applicant No.2. It is specifically mentioned in paragraph No.2 that the applicant No.2 was the Director and Manager of the company and that he was incharge and responsible for the conduct of business of the accused No.1 at all material times. In paragraph No.3 there is specific averment that the applicant No.2 had issued fourteen cheques as the Director of the accused No.1 in favour of the complainant. The second submission made by the learned counsel for the applicants is concerned, the notice issued by the complainant was not in accordance with the provisions of section 138 of the Negotiable Instruments Act also cannot be accepted. The said notice gives details of fourteen cheques including the cheque No., date of issuance, amount of each cheque and date of final denomination. In the paragraph No.4 of the notice the particulars about the transaction and invoice number and date are mentioned mentioned. Thus, it cannot be said that composite notice has been issued by the complainant. The submissions made by the learned counsel for the applicant cannot be accepted. So far as third submission of the learned counsel also cannot be accepted. It is open for the Applicants to take out appropriate proceedings in the Civil Court for breach of the temporary injunction. The applicants can also set up this defence in the trial court Thus, there is no merit in

the submission made by the learned counsel for the applicants. Criminal applications are rejected.

(V.M. Kanade, J.)